

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.16189 OF 2000

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Date: 25th September 2006

Between:

D.V.Prasad, son of D.V.Ramana Rao,
Aged 36 years, Occupation: Employee,
R/o 1-4-245, beside backside of Oil godown,
R.T.C. Workshop Road, Vijayawada.

.... Petitioner.

And

1. Deputy Registrar of Cooperative Societies,
Opp: Jaihind Talkies, Upstairs of
Municipal complex, Governerpet,
Vijayawada and 2 others.

.... Respondents.

* * *

ORDER:

This writ petition is filed being aggrieved by the order dated 06th July 2000 made in O.A.No.52 of 1998 on the file of the A.P. Cooperative Tribunal, Vijayawada, wherein the order dated 15th December 1997 made in Claim Petition No.298 of 1995-96 by the Deputy Registrar of the Cooperative Societies, Vijayawada, was confirmed.

2. It appears that the petitioner was a Sales Assistant and an employee of the second respondent society. Admittedly, he worked as a Sales Assistant in the society from 01.4.1992 to 11.8.1992. In the year 1994 it was found that there was a shortage of goods worth

Rs.67,808-45 ps. in the society, therefore, on the basis of a report dated 01.8.1994 submitted by the Senior Inspector, a show cause notice dated 06.8.1994 was issued. The petitioner submitted his explanation on 24.8.1994. Having not satisfied with the explanation, a claim under Section 61 of the A.P. Cooperative Societies Act (for short 'the Act') was made before the Arbitrator. On behalf of the society, P.W.1 was examined and Exs.P-1 to P-4 were marked. On behalf of the petitioner, D.W.1 was examined and Exs.D-1 to D-3 were marked. After a detailed consideration of the entire evidence on record, the Arbitrator came to the conclusion that the petitioner is liable to pay an amount of Rs.67,808-45 ps. with 18 per cent interest thereon. Aggrieved by the same, the petitioner carried the matter in appeal before the A.P. Cooperative Tribunal, Vijayawada. The Appellate Tribunal, after a detailed consideration of the order passed by the Arbitrator and after going into the material placed before it, came to the conclusion that there is no necessity to interfere with the award and decree passed by the Arbitrator, and thus, dismissed the appeal. Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner Sri P.Srinivas, strenuously contended that absolutely there is no acceptable evidence either before the arbitrator or before the appellate authority to come to the conclusion that the petitioner is liable to pay an amount of Rs.67,808-45 ps. which was found to be shortage in the stocks. The Senior Inspector who submitted his report on 01.8.1994 was not examined before the Court. Further, Exs.P-3 was not marked through the person who prepared the same nor the persons prepared examined separately. Further, the petitioner was on leave on many occasions and somebody was officiating him temporarily and that person was

also not examined. Therefore, the award passed by the Arbitrator as confirmed by the Tribunal are liable to be set aside.

4. Per contra, learned counsel for the respondent Sri K.Rajanna submitted that since no ground is made out to interfere with the award passed by the Arbitrator as confirmed by the Tribunal, the writ petition is liable to be dismissed.

5. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the other material made available on record.

6. At the outset, I am of the opinion that the Tribunal has considered each and every aspect of the factual matrix as contended by the learned counsel for the petitioner herein and passed a cogent and reasoned order and it does not require any interference by this Court. It is suffice to notice the findings of the Tribunal as under:

“ The then Managing Director of the respondent stores by name Sri P.Krishna Mohan was examined as P.W.1, before the lower court. He has deposed about the work entrusted to the appellant herein and also filed certain documents, which were marked as Ex.P-1 and P-2. Ex.P-1 is stock statement at the time of taking charge on 31.3.92 and Ex.P-2 is stock statement at the time of handing over charge by the appellant herein to his successor. These two documents were not disputed by the appellant herein. P.W.1 has categorically stated when appellant herein was in charge of the section, he has taken the stock worth of Rs.2,60,845-80 ps. from his predecessor as per Ex.P-1 and he handed over stocks worth at 2,52,608-65 under Ex.P-2. As against the liability register showed there is deficit of Rs.57,487-00.”

The learned counsel for the petitioner also stated that there was no system of liability available in the society. In this regard it may be necessary to notice the findings of the Tribunal.

“There is no cross-examination to P.W.1 by the learned counsel for the defendant that the Senior Inspector did not conduct stock verification report properly. Admittedly, the report of the Senior Inspector is only administrative report. After receipt of the said report from the S.I., the Deputy Registrar issued show cause notice to the appellant on 6.8.94. For that the appellant gave his reply on 25.8.94 wherein, he has not at all disputed the *locus standi* or competency of inspecting officer or the said report is not correct except to deny his liability. Under such circumstances, the question of examining the said Senior Inspector or other persons who also verified the stock does not arise.”

Apart from the above, it may also be necessary to notice the following findings of the Tribunal as under.

“ In the explanation given to the show cause notice, the appellant did not raise the contention that there was no liability system was in vogue. Anyhow, the respondent herein did not file any circular to that effect. But taking such plea, by appellant subsequent to his explanation is only an after thought and on that ground he cannot escape from his liability if it is proved. Hence, non-filing of such circulars has no way improves the case of the appellant. The learned counsel for the appellant herein tried to elicit from P.W.1 to establish there was no liability system during the tenure of the appellant herein but he did not elicit any useful information to the effect. The P.W.1 categorically stated that the liability system was in vogue at the time of tenure of appellant herein. Even the appellant, who has been examined as D.W.1

before the lower court, has categorically admitted that he was aware of liability system, which was existing in the respondent organization. It is also contended by the appellant at no point of time, no deficit in stock was brought to his notice by any authority, but the appellant who was the defendant before lower authority has admitted the management of Vijayakrishna Super Bazar has informed him about the deficits occurred in the packing section during his time and he received notice. This itself is sufficient whether he was informed about the deficits. Hence, he cannot take plea that he has no knowledge about the deficits and the same was brought into existence by fabricating the documents by the authorities concerned later.”

This would show that the entire findings recorded by the Arbitrator as confirmed by the Tribunal are on the basis of records maintained in the society, but not on the basis of any oral evidence. Under those circumstances, I am of the opinion that neither the Arbitrator nor the Tribunal has committed any error calling for any interference of this Court under Article 226 of the Constitution of India. They are all pure questions of facts, which were concluded concurrently; therefore, the writ petition is liable to be dismissed.

7. Further, learned counsel for the petitioner tried to impress upon the court by relying upon the judgments in **Challa Sanyasinaidu V. Deputy Registrar of Cooperative Societies, Srikakulam**^[1] for the purpose of conducting a detailed enquiry into the matter and in **United India Insurance Company Limited, Hyderabad V. Mohd. Khaj Rasool Sayyed @ Mohd. Khaja Main Shaik and another**^[2] and also in **Narboda Devi Gupta V. Birendra Kumar Jaiswal and another**^[3]

to show that the strict rules of evidence have to be followed and there is no acceptable evidence in this regard. I am of the opinion that all the judgments have no relevance to this case.

8. The writ petition is accordingly dismissed. No order as to costs.

C.V.RAMULU, J.

Date: 25th September 2006.
BSB

[\[1\]](#) 1998(1) ALT 482 (DB)

[\[2\]](#) 2003(5) ALD 162

[\[3\]](#) (2003) 8 Supreme Court Cases 745